

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES J. STALLWORTH and U.S. POSTAL SERVICE,
SAN FRANCISCO BULK MAIL CENTER, Richmond, Calif.

*Docket No. 96-1737; Submitted on the Record;
Issued August 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed enlarged left ventricle muscles due to stress; and (2) whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

The Board has duly reviewed the case on the record and finds that appellant has failed to meet his burden of proof in establishing that he developed enlarged left ventricle muscles due to stress.

Appellant filed a notice of occupational disease on November 2, 1995 alleging that he developed enlarged left ventricle muscles due to stress in the performance of duty.¹ By decision dated April 11, 1996, the Office denied appellant's claim finding that he failed to establish an injury in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an

¹ Appellant filed claim number 13-1018950 on June 14, 1993 alleging that he sustained an emotional condition on June 14, 1993. The Board issued a decision regarding this claim on May 2, 1995. (Docket No. 93-2499) The Board will not consider this claim on appeal. 20 C.F.R. § 501.6(d). Appellant filed claim number 13-1064072 on October 17, 1994 alleging an emotional condition. The Office of Workers' Compensation Programs issued a final decision in this claim on March 24, 1995. As more than one year has elapsed from the date of this decision to the date of appellant's request for review by the Board on May 10, 1996, the Board lacks jurisdiction to consider this decision on appeal. 20 C.F.R. § 501.3(d)(2).

employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant attributed his condition to the failure of the employing establishment to state the truth on a letter of decision. He stated that the employing establishment found he failed to reply at the appointed time to a letter dated September 22, 1995 proposing his removal from his position. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.³

The Board notes that there is no evidence in the record from the employing establishment indicating that appellant failed to timely respond to the proposed removal. Appellant has submitted an unsigned letter indicating that he responded to the proposed removal within 10 days. The employing establishment responded on December 13, 1995 and stated that appellant had not been removed from the employing establishment.

Appellant alleged that the employing establishment improperly noted that he was examined for fitness of duty on January 14, 1995 as the examination took place on January 13, 1995. He further stated that the examination was not reasonable as it was not scheduled and was not comprehensive. The Board notes that a fitness-for-duty examination is an administrative or personnel requirement.⁴ Although appellant has alleged error or abuse, the Board finds that the error in the date of examination does not rise to the level of administrative error or abuse on the part of the employing establishment. At the examination, Dr. Steven M. Raffle, a Board-certified psychiatrist,⁵ noted that appellant had failed to appear for two previously scheduled appointments and concluded the length of time for examination of appellant was more than adequate. Appellant's supervisor, Gary K. Thompson, also indicated that appellant was not forced to attend the examination with Dr. Raffle. As appellant has not submitted any evidence supporting his allegations of error or abuse, he has not established that these events constitute factors of employment.

² *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

³ *Martha L. Watson*, 46 ECAB 407 (1995).

⁴ *Lillie M. Hood*, 48 ECAB ____ (Docket No. 96-57, issued September 17, 1996).

⁵ In a report dated January 24, 1995, Dr. Raffle stated he examined appellant on January 14, 1994 for 25 minutes and that he examined appellant at the employing establishment because appellant did not appear for two scheduled appointments. Dr. Raffle found appellant's speech and motor activity abnormal and his emotional state inappropriate. He diagnosed schizophrenia paranoid type noting that appellant exhibited flat affect, loosened associations, autistic thinking and ambivalence. Dr. Raffle concluded that appellant was not fit to perform his duties as a mail handler. Dr. Raffle concluded that the examination was not stressful and in no way contributed to appellant's complaints of chest pains.

Appellant alleged that he lost four hours of pay on January 13, 1995 and that he was administratively “crucified” as the employing establishment wanted him to provide medical documentation indicating whether he could perform the duties of his position. Mr. Thompson also denied these allegations and stated that it was employing establishment policy for employees to submit medical evidence in support of their claimed conditions. Appellant has not submitted evidence that the employing establishment erred or acted abusively regarding his leave or request for medical documentation.

Appellant stated that 15 minutes into the examination he developed chest pains, shortness of breath and pain in his left shoulder and neck. Appellant asked to be excused to obtain his medication, and then requested transportation to a hospital. He alleged that transportation was delayed 20 minutes. Mr. Thompson stated that appellant was not required to wait.

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁶

There is no evidence supporting appellant’s allegation that the employing establishment acted unreasonably in attempting to allow him to obtain his medication or in arranging transportation to the hospital.

Appellant also alleged that the Office did not expeditiously process his claims. The Board has held that the processing of a compensation claim bears no relation to an employee’s day-to-day or specially assigned duties and is not a compensable factor of employment.⁷ As appellant failed to establish a compensable factor of employment, he failed to meet his burden of proof and the Office properly denied his claim.

The Board further finds that appellant has failed to meet his burden of proof in establishing that he developed shortness of breath and headaches due to employment-related stress.

Appellant filed a claim for emotional condition on January 11, 1996. By decision dated April 24, 1996, the Office denied appellant’s claim.

Appellant attributed his emotional condition to the institution of administrative leave by the employing establishment on February 2, 1995.⁸ In a letter dated February 2, 1995, the employing establishment stated that appellant was placed in an administrative leave status effective that date based on the most recent fitness-for-duty examination. The Board has held

⁶ *Alice M. Washington*, 46 ECAB 382 (1994).

⁷ *Joseph G. Cutrufello*, 46 ECAB 285, 294 (1994).

⁸ Appellant also discussed the fitness-for-duty examination previously discussed.

that actions of the employing establishment in matters involving the use of leave are generally not considered compensable factors of employment because they relate to administrative or personnel matters. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁹ In this case there is no evidence that the employing establishment did not act reasonably in providing appellant with administrative leave based on his fitness-for-duty examination.

Appellant also alleged that the employing establishment discriminated against him by failing to provide him with information regarding his disability retirement application. When an employee experiences stress in carrying out his or her employment duties, or has fear and anxiety regarding the ability to carry out the work duties, the disability is generally regarded as due to an injury arising out of and in the course of employment. On the other hand, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability resulting from job insecurity, or frustration from not being permitted to work in a particular environment or to hold a particular position. Disability retirement does not relate to appellant's regular or specially assigned duties and therefore is not covered under the Act.

Appellant also attributed his condition to errors by the employing establishment finance office in awarding his administrative leave. In a undated letter, Reverend Willie L. Bolds, the employing establishment timekeeper, noted that appellant's extension had been approved. He stated that he had arranged for appellant to receive an additional two day pay for the coming pay period. This letter establishes that the employing establishment erred in failing to provide appellant with administrative leave in this particular instance. Appellant also alleged other errors in the distribution of his administrative leave, however, appellant did not submit any evidence in support of his allegations of error abuse in the administration of the personnel matter.

Appellant has established a compensable factor of employment, that the employing establishment erred in awarding administrative leave. However, as the record is devoid of any medical evidence supporting appellant's claim that he developed an emotional condition due to factors of his federal employment. The only medical report in the record is Dr. Raffle's January 13, 1995 fitness-for-duty examination which found that appellant's emotional condition was not work related. As appellant has failed to submit sufficient medical evidence to establish a causal relationship between his diagnosed condition and accepted factors of employment he has failed to meet his burden of proof and the Office properly denied his claim.

⁹ *Martha L. Watson, supra* note 3.

The decisions of the Office of Workers' Compensation Programs dated April 24 and April 11, 1996 are hereby affirmed.

Dated, Washington, D.C.
August 20, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member